PARAMESUARI v. AYADURAI

[Divorce Jurisdiction (Good J.) January 20, 1959]

[Ipoh — Divorce Suit No. 7 of 1957]

Divorce — Marriage according to Ceylon Tamil Hindu custom — Re-marriage of spouse with another woman while first marriage still in legal existence — Whether first marriage a monogamous marriage.

Customary law — Ceylon Tamil Hindu marriage — Monogamous character — Proof.

In this case the Court accepted the evidence of the priest who performed the marriage ceremony between the petitioner and respondent, and expert evidence on the traditional features of a marriage between Ceylon Tamil Hindus. The priest testified to the fact that he had celebrated over 800 such marriages and this was the first instance he had come across of a party to any of those marriages re-marrying during the lifetime of the other spouse. The Court found as a fact that the parties were parties to a binding marriage contract which was monogamous in its nature. As there was proof of respondent's subsequent marriage to another woman it was held that the petitioner was entitled to a decree of dissolution of her marriage.

Petitioner's costs to be paid by the respondent.

DIVORCE.

F. C. Arulanandom for the petitioner.

S. Sothi for the respondent.

Good J. delivering oral judgment: The respondent has withdrawn his opposition to this petition and wishes to be heard only on the question of costs which I will deal with after I have given my decision on the main issues.

The matters which the petitioner has to prove are that she and the respondent were parties to a valid and binding contract of monogamous marriage, and that the respondent subsequently went through a form of marriage with another woman while his marriage with the petitioner was still in legal existence. In addition, in order to have jurisdiction to grant the petitioners her prayer for a decree of dissolution of marriage, I have to be satisfied that the parties were both domiciled in the Federation at the time when the petition was presented.

Evidence has been given by the priest who performed the marriage ceremony between the petitioner and the respondent in February, 1945. He has described the features of that ceremony. And an expert witness, Dr. Swami Satyananda, has given expert evidence on the traditional features of a marriage between Ceylon Tamil Hindus, and has also given his opinion on what are the essential parts of such a ceremony.

I am satisfied that the essentials were present in the ceremony performed by the Reverend Somaskanda Kurukar when he married the parties. This was a marriage ceremony solemnised according to Ceylon Tamil Hindu custom and, according to Dr. Swami Satyananda, such marriages are monogamous. If any further evidence of its monogamous character were required, it is to be found in the fact testified to by the Reverend Somaskanda Kurukar to the effect that he has celebrated over 800 such marriages and this is the first instance he has come across of a party to any of those marriages re-marrying during the lifetime of the other spouse. I therefore have no hesitation in finding as a fact that the parties were parties to a binding marriage contract which was monogamous in its nature.

Proof of the subsequent marriage of the respondent with another woman in November, 1955, was given as provided by law by the production of a certified copy of the entry in the Marriage Register under the Registration of Marriages Ordinance, 1952. That is *prima facie* evidence and, of course, as it has not been disputed by the respondent it becomes conclusive evidence. I therefore find as a fact that the respondent since the solemnisation of his marriage with the petitioner, which marriage is still binding on the date in question, went through a form of marriage with another woman.

These two facts which I have found in the petitioner's favour entitle her to a decree of dissolution of her marriage with the respondent provided that I am satisfied that I possess jurisdiction *ex domicilio*. Both parties were born in what is now the Federation of Malaya. The respondent is in permanent employment under the Government of the Federation of Malaya. Both parties have taken out Federal citizenship papers and, to my mind, that is very strong evidence of *animus manendi* — the intention of remaining in this country. In my opinion, local domicile of both parties is sufficiently proved to leave no doubt as to the jurisdiction of the Court to grant the decree for which the petitioner prays. I therefore make a decree *nisi* for the dissolution of the marriage between the parties. No special application has been made for a curtailment of the statutory period of three months for making the decree *nisi* absolute. It therefore will not be made absolute until application to that effect is made after the expiration of three months from today.

On the facts of the case the petitioner is prima facie entitled to the custody of the sole child of the marriage — a girl now 11 years of age named Retneswari. In addition, having heard evidence of the kind of home which the petitioner will be able to provide for her daughter and of the petitioner's financial position, I have no doubt that it is in the interest of the child that she should remain in the custody of the petitioner. And, of course, the interests of the child are paramount. I therefore grant the prayer for custody, and that leaves only the question of costs on which the respondent wishes to be heard.

[After hearing argument of Counsel for both parties on the question of costs, His Lordship ordered that the petitioner's costs be paid by the respondent.]

Petition granted.